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HUMAN RIGHTS COMMITTEE
Fifty-second session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

Nepal

1. The Committee considered the initial report of Nepal (CCPR/C/74/Add.2) at its 1359th and 1363th meetings, held on 17 and 19 October 1994, and adopted[1] the following comments:

A. Introduction

2. The Committee welcomes the initial report (CCPR/C/74/Add.2) and the core document (HRI/CORE/1/Add.42) of Nepal and expressed its appreciation to the State party for the opening of a constructive dialogue. The Committee regrets, however, that the information provided in the report was in many respects incomplete and did not follow the Committee's guidelines for the preparation of initial reports (CCPR/C/5/Rev.1). The lack of information on factors and difficulties impeding the implementation of the Covenant prevented the Committee from gaining a clear idea of the real human rights situation in the country.

3. The Committee expresses its appreciation to the State party for taking part in the dialogue and for responding to the questions raised by members of the Committee. The valuable information provided orally supplemented to a certain extent the report, thereby providing a sound basis for a frank and fruitful dialogue between the Committee and the State party. It, however, regrets that the delegation could not include representatives of the various Ministries concerned with the implementation of the Covenant, in particular of the Ministry of Justice.

[1] At the 1382nd meeting, held on 2 November 1994.

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee recognizes that Nepal is emerging from a long period of isolation, and that the remnants of authoritarian rule have not yet been overcome. Steps remain to be taken in engaging, consolidating and developing democratic institutions for better implementation of the Covenant. Economic depression, extreme poverty and widespread illiteracy constitute obstacles to the effective implementation of the Covenant.

C. Positive aspects

5. The Committee welcomes the efforts undertaken by the State party to establish democratic institutions and multipartism as well as its declared commitment to the rule of law and the independence of the judiciary. It takes note, in particular, of the adoption of a new Constitution which provides the basis for a parliamentary system of government based on multi-party democracy as well as for an independent Supreme Court. The right of citizens to petition the Supreme Court to challenge laws which violate human rights and the use of this right is particularly welcomed. The Committee also notes with satisfaction that Nepal has recently acceded to a number of international human rights instruments, including the first Optional Protocol to the Covenant.

D. Principal subjects of concern

6. The Committee notes that the status of the Covenant within the legal system is unclear and that the necessary steps to adopt legislative and other measures necessary to give effect to the rights recognized in the Covenant have not yet been taken. Furthermore, a significant gap exists between provisions of the Constitution and other legal norms on the one hand, and their application in practice, on the other. Accordingly, there is a need to clearly define the place of the Covenant within the Nepalese legal system to ensure that domestic law are applied in conformity with the provisions of the Covenant and that the latter can be invoked before the courts and applied by the other authorities concerned. The lack of publicity given to the provisions of the Covenant and the Optional Protocol is also a matter of concern. Since provisions of the Constitution seem to provide rights and freedoms to citizens only, the Committee draws the State party's attention to its obligations to ensure to all individuals within its jurisdiction the rights and freedoms recognized in the Covenant.

7. The Committee notes that the non-discrimination clauses in article 11 of the Constitution do not cover all the grounds provided for in articles 2 and 26 of the Covenant. It is particularly disturbed by the fact that the principle of non-discrimination and equality of rights suffers serious violations in practice and deplores inadequacies in the implementation of the prohibition of the system of castes. The persistence of practices of debt bondage, trafficking in women, child labour, and imprisonment on the ground of inability to fulfil a contractual liability constitute clear violations of several provisions of the Covenant.

8. The Committee expresses its concern over the situation of women who, despite some advances, continue to be de jure or de facto the object of discrimination as regards marriage, inheritance, transmission of citizenship to children, divorce, education, protection against violence, criminal justice, and wages. The Committee is also concerned that the average life expectancy of women is shorter than that of men. It regrets the high proportion of women prisoners sentenced for offences resulting from unwanted pregnancies.

9. The Committee deplores the lack of clarity of the legal provisions governing the introduction and administration of a state of emergency, particularly article 115 of the Constitution, which would permit derogations contravening the State party's obligations under article 4, paragraph 2, of the Covenant.

10. The Committee is deeply concerned with the cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, security or other forces during the period under review which have been brought to its attention. It deplores that those violations were not followed by proper inquiries or investigations, that the perpetrators of such acts were neither brought to justice nor punished, and that the victims or their families were not compensated. It regrets that the draft bills against torture and ill-treatment of the person as well as on the compensation of victims of torture, have not yet been adopted. Moreover, the quasi judicial authority of the Chief District Officer and the insufficient protection of the independence of the judiciary undermines the efforts aimed at preventing the occurrence of similar acts.

11. The Committee notes with concern the excessive restrictions on the right to freedom of expression and information and the restrictions which apply to the manifestation of religion and to change of religion.

E. Suggestions and recommendations

12. The Committee recommends that the legislative reforms presently under way in Nepal be expanded and intensified in order to ensure that all relevant legislation be in conformity with the Covenant. It emphasizes the need for the provisions of the Covenant to be fully incorporated into domestic law and made enforceable by domestic courts. Necessary steps should be taken to give effect to the rights recognized in the Covenant. The text of the Covenant and the first Optional Protocol should be translated into all languages spoken in Nepal, widely publicized and included in school curricula, to ensure that the provisions of these instruments are widely known to members of the legal profession, the judiciary and law enforcement officials, as well as to the general public. The legal profession and non-governmental organizations should be encouraged to contribute to the process of reform.

13. The Committee stresses the need to take appropriate action in order to ensure the effective application of articles 2 and 3 of the Covenant, particularly through the adoption of administrative and educational measures designed to eliminate traditional practices and customs detrimental to the well-being and status of women and vulnerable groups of the Nepalese society.

14. The Committee recommends that appropriate information be gathered and educational measures be taken to eradicate practices of debt bondage, trafficking in women and child labour. Prison reforms now envisaged should be accelerated.

15. The Committee recommends that the authorities adopt legislation to bring its domestic legal regime into harmony with its obligations under article 4, paragraph 2, of the Covenant.

16. The Committee urges the Government of Nepal to take all necessary measures to prevent extra-judicial and summary executions, enforced or involuntary disappearances, torture and degrading treatment and illegal or arbitrary detention. The Committee recommends that all such cases be systematically investigated in order to bring those suspected of having committed such acts before the courts and that the victims be compensated.

17. The Committee recommends that Nepal studies measures directed towards the abolition of the death penalty, and give consideration to accession to the Second Optional Protocol.

18. The Committee also recommends that necessary measures be taken by the Government to give effect to the separation of executive and judicial functions and to ensure the full independence and proper functioning of the judiciary. The texts of the draft bills against torture and ill-treatment of the person as well as on compensation of victims of torture should be brought into line with the provisions of the Covenant and adopted as soon as possible. Specifically targeted training courses on human rights for law enforcement

officials, members of the judiciary, members of the police and security forces should be organized.

19. The Committee calls upon the state party to prepare its second periodic report in compliance with the Committee's guidelines for the preparation of State party reports (CCPR/20/Rev.1). The report should in particular include detailed information on the specific laws applicable to each right protected under the Covenant and the extent to which each right is enjoyed in practice, and refer to specific factors and difficulties that might impede its application. In undertaking this obligation, the State party may avail itself of the Advisory Services and Technical Assistance Programme of the United Nations Centre for Human Rights.